

New Hampshire Rail Transit Authority
Meeting Minutes, January 16, 2009

I. Members present: Tom Mahon, David Preece, Tim Moore, Jay Minkarah, Bruce Woodruff, Steve Williams, Kathy Hersh, Mike Izbicki, Malcolm Taylor, Kit Morgan, Mark Brewer, Ted Starkweather, Nancy Larson, Candace Bouchard, Bob Williams, Ron O'Brien

II. Public Input: Barbara Pressley suggested the board look into rotation of members' terms. Tom Noel asked if the RTA web site had been activated yet (it has not).

III. Lisa Levine of Congressman Paul Hodes's staff spoke about the economic stimulus program being considered by Congress. The House Appropriations Committee has just released its bill, which should be taken up by the full House in a week or two. It is likely there will be changes on the House floor and in the Senate. Final action should take place in a few weeks. Congressman Hodes is soliciting ideas from communities and groups. The bill will not contain earmarks, but is likely to provide funding to states through existing Federal formula programs. Her office is working with the Governor's office and state agency heads on details. A summary of the bill is available on the House Appropriations Committee website. Among its provisions will be tax cuts, direct aid to States (e.g. Medicaid), infrastructure spending (energy, transportation, broadband), and some aid to communities through formula programs. Congressman Hodes supports the provision that funding will be 100% federal. The program is designed to support projects that can be implemented quickly, but the definition of "shovel-ready" is changing. Board members had several comments and questions, including a comment that federal requirements increase the cost of projects, and a question about how project oversight will be included in the program. Ms. Levine also said Congress is working on the FY 2009 appropriations bills, and that it looks promising to have an omnibus bill approved in February. The earmark requests for the NH Corridor rail project are on the Congressman's list, and these are being negotiated at the staff level in the House and Senate.

IV. The minutes of the December 19, 2008 Committee of the Whole meeting were approved on a motion by Preece seconded by Taylor. The minutes were amended to correct the spelling of Nancy Larson's name.

V. Reports

A. The board met with Attorney David Hilts to discuss six legal issues. The first was the vote on the interim executive director. The employment agreement discussed in December was not the appropriate vehicle because there is no compensation and there is uncertainty about the applicability of state personnel rules, but Hilts suggested a resolution and a change in the bylaws to clarify this action. The resolution would delegate certain powers and duties to the director, Mike Izbicki, as a board member, similar to establishing a subcommittee. The board chair would nominate the executive director and the indemnification and conflict of interest provisions would apply to him as a board member or officer. A motion to approve the resolution (by Preece, second by Starkweather) was approved pending the revision and approval of the bylaws.

The board discussed two bylaw changes with Hilts, dealing with actions of individual board members and severability. Board members Hersh and Woodruff were concerned that the language of the change related to board members' actions might limit members' ability to report to their own jurisdictions on the authority's activities. Other board members agreed, and the board approved a change suggested by Minkarah to the proposed bylaw wording to clarify that the limitation is on members acting on behalf of the authority. The severability clause, a standard legal phrasing, was also approved.

The board discussed the legal status of the authority under RSA 238-A, and where it should fit in a continuum between a state agency and a private entity. The Attorney General's office has been asked to draft legislation on indemnification of board members and legal representation by the AG's office. In order to accomplish this, Hilts said it is necessary to know a) what the law currently provides, b) what kind of entity the board wishes to be, and c) what is the best form to accomplish the goals of the board. He is working on an analysis of the options that exist, and could still draft legislation for this session under an existing legislative service request (LSR). Hilts will report at the February meeting on the status of his research. Woodruff suggested looking at other examples such as NNEPRA in Maine, and at what may be required to qualify for economic stimulus funding. Taylor noted that the federal legislation on intercity passenger rail includes a definition of a state authority. Hilts agreed to look at these and other examples. Hilts noted that the board probably should not be a state agency or be subject to all state procedures to accomplish its goals, but if it is too unlike a state agency it may not be able to accept Federal funds. Williams asked if the board could have his memo before the meeting to review at the February meeting.

Hilts clarified the conflict of interest provisions of RSA 238-A, which mean that members cannot acquire an interest in a matter before the board, but recognize that members may come to the board already holding an interest. The law prohibits them from participating in decisions that could create a conflict of interest.

.B. The board discussed the draft bylaws and proposed changes. Revisions approved were a change to 4.1.1 to add consultation with the chair in preparation of the agenda; changes to 7.1.1.8 to add the words "no more than" as previously discussed, correction of 71 to 7.1, and the amendments prepared by Hilts as previously revised. A motion to adopt the revised bylaws (Preece, second by Mahon) was unanimously adopted, subject to final review of the text at the February meeting.

A motion to approve the resolution appointing Izbicki interim executive director (Preece, Minkarah second) was adopted (Izbicki abstaining). Hersh asked for clarification on whether Izbicki could vote; Williams state he could, as a board member. Taylor asked if bylaw amendments require a 2/3 vote; they do require that majority (8.0). The board thanked Tim Moore for his hard work in drafting the bylaws.

C. The board discussed how to proceed on several issues to bring the RTA into full compliance with RSA 238-A and other statutes. a) Election of officers; it was decided to wait to see if pending legislation changes the makeup of the board. b) Executive committee appointment: Minkarah asked the acting chair to submit a slate for the February meeting, and the board agreed with this approach. c) RSA 91-A: the RTA needs a web page to comply with agenda and minutes posting requirements. Morgan said DOT has asked the Department of Information Technology to add a page to the DOT website so this material can be added. Williams suggested that members post materials on their own websites and in public facilities. d) Government relations (4.1.5): Hersh noted that this requires action by the executive director on behalf of the authority "in specific cases," and said clarification was needed on what these were. It was agreed to provide a list for the February meeting. e) The committees provided in Section 7. Hersh suggested the committees, some of which exist already, be re-formed under the bylaws and formally documented.

D. This topic was covered in the discussion with Lisa Levine.

E. Izbicki reported that he had been discussing funding sources for the NH Capitol Corridor project with DOT and others, that these may include both the Federal Railroad Administration and Federal Transit Administration. He has met with Patricia Quinn, director of NNEPRA, to coordinate with her and discuss opportunities for cooperative efforts. He has produced a brief release on the project for local cable TV which has aired in two communities.

F. Next meeting. With the approval of legislative appointments to the board, future meetings will be able to take place in Rooms 201-203 of the Legislative Office Building unless there is a conflict. They will also be posted in the House Calendar. The next meeting will be Feb. 20 at 10:00 am.

The meeting adjourned at 12:00.